

**ISLAND COUNTY PLANNING COMMISSION  
SUMMARY MINUTES  
COMMISSIONER'S HEARING ROOM, COUPEVILLE, WA  
MONDAY, JANUARY 25, 2016**

	<i>Members Present</i>	<i>Members Absent</i>
<i>District 1</i>	<i>Val Hillers</i>	
		<i>Dean Enell – Vice Chair</i>
	<i>Karen Krug</i>	
<i>District 2</i>	<i>Jeffery Wallin– Chair</i>	
	<i>George Saul</i>	
		<i>Darin Hand</i>
<i>District 3</i>	<i>James Caspers</i>	
	<i>Beth Munson</i>	
	<i>Scott Yonkman</i>	

Meeting was called to order at 2:02 p.m. by Chair Wallin.

**ROLL CALL**

James Caspers, Beth Munson, Val Hillers, Jeff Wallin, George Saul, Karen Krug, Scott Yonkman.

Planning and Community Development staff present: Hiller West, Director of Community Development.

**MINUTES**

None

**DIRECTOR'S REPORT**

- Director West discussed that the agenda had changed, since Long Range Planning materials could not be completed quickly enough to provide the Planning Commission and the public adequate time to review the materials prior to the meeting. He noted that Long Range Planning is working to develop a revised Comprehensive Plan Update schedule, which will be presented at the next meeting.
- Director West and Staff have advised the Board of County Commissioners (BOCC) that there has been an increase of application submittals recently, almost wholly residential. Permit timelines have improved, and once the new planners are up to speed the timeframes will be back on track.
- There has been an update to the FEMA appeal regarding boundaries in flood hazard areas on Whidbey and Camano Islands. Our contractor, Coast and Harbor Engineering, is

working in support of the appeal. The preliminary information will be going to FEMA January 26, 2016, and the Letter of Map Revision (LOMR) will follow over the next several months.

- Commissioners asked what the future impacts will be.
  - The extent to the flood boundaries and the map elevations may be changed. The County's opinion is there is rationale changing those boundaries, especially on Whidbey Island's east side, and Camano Island's west and east sides. Some locations show elevations that are quite high, and flood boundaries that do not match the County's experience.
- Commissioner Yonkman asked what types of applications are being received.
  - A few short plats, storage facilities on Whidbey's south end, bulkhead repairs and replacements, shoreline exemptions, new residences at the base of bluffs that need geo tech review, and residential applications in conservation and wetland areas.
- Commissioner Caspers asked if historical waterfront lots will maintain reduced setbacks.
  - Canal communities will maintain reduced setbacks, but Director West is uncertain about whether historic properties will maintain reduced setbacks.

### **ITEMS FROM THE PUBLIC**

None

### **NEW BUSINESS**

#### ***Workshop discussion on proposed amendments to Chapter 16.13 and 16.19 ICC***

- Director West noted that there had been a request from the BOCC to draft changes to the process for appeals of Type I decisions issued by the Island County Planning Director. With these changes, appeals would be heard by the Island County Hearing Examiner instead of the BOCC. Type III decisions issued by the Island County Hearing Examiner would become final land use decisions. Rather than be appealable to the BOCC, these final decisions would be appealable to Superior Court or the Shoreline Hearings Board. These changes are recommended by Washington Counties Risk Pool.
- Director West explained the reasons behind shifting the appeals of Type I decisions to the Hearing Examiner and Type III decisions becoming final. He worked with the Dan Mitchell, Deputy Prosecuting Attorney to draft this proposal. These proposed amendments to ICC 16.13 and 16.19 are described in greater detail in the staff report (excerpt follows).

***Excerpt from staff report dated 1/11/16:***

Island County's requirements for administrative appeals are described in Island County Code Chapters 16.13 and 16.19. Chapter 16.13 is focused on the Hearing Examiner's duties, jurisdiction and procedures. Specifically regarding appeals, ICC 16.13.100 provides that the Examiner's decisions on various types of Type II and Type III decisions shall be final unless the decision is appealed to Superior Court or the Shoreline Hearings Board. However, ICC 16.13.110 (E) includes Type I decisions as decisions over which the Examiner shall have no jurisdiction, and it furthermore goes on to state that *"Such proposals shall be solely within the jurisdiction of the Board, upon recommendation from the Planning Commission, except that Type I decisions or the placement of liens shall not require action by the Planning Commission."*

ICC Chapter 16.19 includes, among various provisions, the requirements for administrative appeals of Type I, II and III decisions. ICC 16.19.190(A.2) currently provides that an applicant may appeal denial of a Type I application (except for appeals of Marshall Drainage Basin and clean water utility charges, or a Type I capacity determination) to the Board of Island County Commissioners. Subsection (C ) also provides that decisions on Type III applications may be appealed to the Board of Commissioners by the applicant, a department of the county, or a party of record who is also an aggrieved person.

The proposed amendments would change the hearing body for appeals of Type I decisions from the Board of Island County Commissioners to the Island County Hearing Examiner. ICC 16.13.100 would include appeals of Type I decisions (in addition to appeals of Type II decisions) within the scope of decisions by the Hearing Examiner *which shall be final unless appealed to Superior Court or the Growth Management Hearings Board* (in the case of a SEPA threshold determination issued for a legislative action initiated pursuant to GMA).

In addition, the proposed amendments clarify that a decision on a Type III permit shall be a final county land use decision and therefore may only be appealed as provided in State Law, that is to Island County Superior Court under the Land Use Petition Act, or the Shoreline Hearings Board as provided under the Shoreline Management Act (RCW 90.58). Examples of land user permits to which this provision applies are listed in ICC 16.13.11(B), and include the following:

1. Shoreline substantial development permit, conditional use, and variance permits when the underlying permit requires a hearing, rescission of such permits.
2. Preliminary plat application;
3. Critical area alterations as provided in chapter 17.02;
4. Site plan review for conditional uses classified as Type III decisions in chapters 17.03 and 16.19;
5. Planned residential development applications for five (5) or more dwelling units;
6. Civil penalties associated with shoreline cease and desist orders;
7. Commercial agriculture zoning verifications;
8. Rezones classified as Type III decisions by chapters 17.03 and 16.19; and
9. Critical area variance requests as provided in chapter 17.02B.

Further discussion between the Director and Commissioners clarified the following points:

- Type I decisions are non-subjective, administrative (ministerial) decisions that do not involve SEPA.
- Type I decisions are currently made by Planning Staff on behalf of the Director, and are appealable to the BOCC by the applicant only, and can only be appealed in the case of denial. Proposed amendments would change the appeal venue to Hearing Examiner. If a third-party wants to appeal a Type I decision, Superior Court is the only venue available.
- Type II decisions are generally made by Staff and require more discretion. There are no proposed amendments to Type II decision processes now.
- Type III decisions are more complex, subjective decisions. They involve public hearings, public notice, opportunity for public comment, parties of record.
- Type III decisions are currently issued by the Hearing Examiner, and are appealable to the BOCC. Proposed amendments would change the appeal venue to Island County Superior Court or the Shoreline Hearings Board, as applicable.
- The Hearing Examiner is appointed by the BOCC, and his function is intended to be separate from both the BOCC and Staff.
- Appealing a decision to the BOCC would cost the appellant \$750, while it would be \$1802 for an appeal to Hearing Examiner.

Commissioners voiced the following concerns:

- Commissioner Munson expressed that this strips the advocate from the public, and that this shifts the appeal venue to an unelected bureaucrat, rather than our elected County Commissioners. She doesn't want the commission to lose sight of this advocacy while pursuing greater risk management.
  - Director West acknowledged there could be a risk of loss of elected advocacy, but asserted that a Hearing Examiner's decisions tend to be legally well-crafted, and so are more supportable.
- Commissioner Caspers expressed that people are losing their property rights and must continue to have reasonable elected representation. He does not like the proposed amendments and is opposed to the change. Commissioner Yonkman agrees with this view. Commissioner Caspers then stated that property owners should have a less-expensive appeal option than Superior Court.
- Commissioner Caspers asked if Type III decisions are generally higher impact projects.
  - Director West stated that yes, this is generally the case.
- Commissioner Hillers is in favor of the proposal, because the Hearing Examiner is an impartial party who has a better understanding and knowledge of the law. Commissioner Wallin agrees with Commissioner Hillers.

- Commissioner Krug said that she is in favor of keeping the BOCC involved in the appeals process, because they can be an important political piece should an appeal eventually influence law. She acknowledged that the Hearing Examiner fulfills his function very well, but she doesn't want to see his function expanded.
- Commissioners enquired how many times has the County been sued on a BOCC decision versus Hearing Examiner decisions, Planning/Building? And what are the appeals processes from other jurisdictions?
  - Director West said he would provide this information at the next PC meeting.
- Commissioner Hillers questioned whether this change is as applicable to Island County as it may be to other jurisdictions.
  - Director West will ask Deputy Prosecutor Dan Mitchell if can be available for the February 8, 2016 hearing to help address these concerns.

*Commissioner Yonkman moved to adjourn, Commissioner Krug seconded, motion carried unanimously.*

Meeting adjourned at 3:00p.m.

Respectfully submitted,

Allegra Clarkson